

**SUPERIOR COURT OF NEW JERSEY**  
**MORRIS/SUSSEX VICINAGE**

MARITZA BERDOTE BYRNE

PRESIDING JUDGE

GENERAL EQUITY



MORRIS COUNTY FAMILY COURTHOUSE

P.O. BOX 910

MORRISTOWN, NJ 07963

TEL: (973) 656-3944 / FAX: (973) 656-3921

**By US Mail**

October 9, 2019

Mr. Jeffrey M. Patti  
255 Woodport Road  
Sparta, New Jersey 07871

RE: NJDEP v. Joseph Wallace  
SSX-C-7-19

Dear Mr. Patti,

The court is in receipt of your letter dated October 8, 2019, seeking a two-week adjournment of the hearing date scheduled for Friday, October 11, 2019 for plaintiff's motion in aid of litigant's rights. Opposing counsel does not consent to the request. See October 9, 2019 Opposition Letter at 1 ("[t]he State, while cognizant of the professional deference that usually accompanies adjournment requests by counsel, opposes any adjournment of this matter.").

Pursuant to R. 1:6-3(a):

Except as provided by R. 4:49-1(b) (motion for new trial), any opposing affidavits, certifications or objections filed pursuant to R. 1:6-2 shall be filed and served not later than 8 days before the return date unless the court relaxes that time. Thus, for example, if the return date is on a Friday, any response must be filed and served no later than Thursday of the prior week. Reply papers responding to opposing affidavits or certifications shall be filed and served not later than 4 days before the return date unless the court otherwise orders. Thus, for example, such papers must

be filed and served on Monday for a return date of the following Friday. No other papers may be filed without leave of court.

The court was notified on October 8, 2019 through your letter of counsel's "prepaid vacation plans." Pursuant to R. 1:6-3, any opposition to plaintiff's motion in aid of litigant's rights was due by Thursday, October 3, 2019. As the letter seeking a two-week adjournment was faxed and received three days before the return date of the motion, and five days after the expiration of the period in which to oppose, the request is not timely. Pursuant to R. 1:6-2(a), "[t]he motion shall be deemed uncontested and there shall be no right to argue orally in opposition unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought." There has been no opposition filed in response to plaintiff's motion in aid of litigant's rights filed on September 25, 2019. Accordingly, the court will consider the motion unopposed by defendant Joseph Wallace.

Additionally, in your October 8, 2019 letter, you contend "[a]t no time have I indicated to this court, on the record nor in pleadings nor in correspondence that I represent Ms. Wallace. I do not." On the March 1, 2019 hearing for the Order to Show Cause, however, you gave your appearance for the record as, "Jeffrey Patti from Patti and Patti in Sparta on behalf of the defendant Joseph Wallace and at the moment temporarily I'll be interjecting on behalf of Laura Wallace." Plaintiff's Reply Letter Brief at 2, ex. B at 3:11-16.

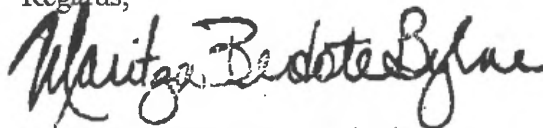
The court is in receipt of a letter from William C. Saracino dated October 7, 2019 seeking to enter an appearance on defendant Laura Wallace's behalf and adjourn the motion as to Ms. Wallace only because "there appears to be certain procedural issues that need to be clarified relative to the lack of service and/or [Laura Wallace's] involvement in the case herein from the very outset. October 7, 2019 Laura Wallace Opposition Letter ("Laura Wallace Opp.") at 2. It is argued "Mr. Patti was never authorized to represent the defendant, Laura Wallace. . . the defendant,

Laura Wallace, has never been served with any pleadings and/or documentation in this case to date, inclusive of the aforesaid pending motion in aid of litigant's rights." Id. The State argues service was properly effectuated on Laura Wallace. Pursuant to R. 4:6-2(d), insufficiency of service of process is a proper defense, however, it is waived if not raised in a motion within 90 days of a responsive pleading. R. 4:6-7; R. 4:6-3. As the State argues, "The hearing on March 1, 2019 would represent a responsive pleading. During the March 1, 2019 hearing. . .Mr. Patti asserted that he was representing Ms. Wallace. Indeed, Mr. Patti subsequently provided a certification on Laura Wallace's behalf. . .Laura Wallace had her opportunity to object to the sufficiency of process in this case, but failed to do so." Plaintiff's Reply Letter Brief at 3, ex. C. Accordingly, the court finds defendant Laura Wallace has been properly served pursuant to R. 4:6-2, R. 4:6-3, and R. 4:6-7.

It is argued Ms. Wallace "has the right to oppose the pending motion and to further file a responsive pleading in this matter at this time, and/or seek entry of dismissal inasmuch as she has not been personally served to date." Laura Wallace Opp. at 2. Because the court finds defendant Laura Wallace has been properly served, Ms. Wallace's opposition was due by Thursday, October 3, 2019 pursuant to R. 1:6-3. Moreover, pursuant to R. 1:6-2(a), plaintiff's motion shall be deemed uncontested by defendant Laura Wallace.

Accordingly, the court will consider plaintiff's motion in aid of litigant's rights unopposed by both defendant Joseph Wallace and defendant Laura Wallace. The court also denies counsel's request for a two-week adjournment.

Regards,



Maritza Berdote Byrne, P.J. Ch.

MBB:la

Copies to:

Kevin J. Fleming  
Deputy Attorney General  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
25 Market Street  
P.O. Box 093  
Trenton, New Jersey 08625-0093

William C. Saracino  
500 Union Boulevard  
Totown, New Jersey 07512